IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

OP.No. 16071 of 1999(L)

PETITIONER:

REGIONAL PROVIDENT FUND COMMISSIONER, ERNAKULAM.

BY ADV. SRI.N.N.SUGUNAPALAN, SC, P.F.

RESPONDENTS:
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1. **MS/.PATEL BABULAL PRANTAL AND BROTHERS (TRADING UNIT), COCHIN.**
2. **M/S. PATEL BABULAL PRANTAL AND BROTHERS (FACTORY UNIT), KALAMASSERY.**
3. **M/S.PATEL VENEERS (PVT.) LTD., KALAMASSERY.**
4. **M/S.BHARATH KUMAR PATAEL AND COMPANY, KALAMASSERY.**
5. **EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, 7TH FLOOR, SKYLARK BUILDING, NEHRU PALACE, NEW DELHI – 110 019.**

BY ADV. SRI.PREMJIT NAGENDRAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.26137 OF 1999 IN O.P.NO.16071/1999 L

DISMISSED

07/06/2007 **SD/-T.R.RAMACHANDRAN NAIR,JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER OF THE CENTRAL GOVERNMENT DTD. 10/02/1994.**

EXT.P2: **COPY OF THE ORDER PASSED BY THE PETITIONER ON 22/02/1995.**

EXT.P3: **COPY OF THE PETITION FILED BY PATEL BABULAL PRANLAL & BROS. (TRADING UNIT) ERNAKULAM, KOCHI – 16 BEFORE THE LEGAL ADVISOR, MINISTRY OF LABOUR GOVT. OF INDIA DTD. 3RD OF APRIL, 1995.**

EXT.P4: **COPY OF THE OBJECTION TO EXT.P3 FILED BY THE PETITIONER DTD. NIL.**

EXT.P5: **COPY OF THE ORDER PASSED BY THE 5TH RESPONDENT DTD. 2/06/1998.**

/TRUE COPY/

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T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 16071 of 1999-L.

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Dated this the 7th day of June, 2007.

J U D G M E N T

This Original Petition is filed by the petitioner challenging Ext.P5 order passed by the Employees' Provident Fund Appellate Tribunal. The Tribunal passed Ext.P5 order in an appeal filed by respondents 1 to 4 challenging Ext.P2 proceedings of the petitioner herein. The operative portion of the same is the following:

> **"All the appeals are allowed to the extent that all the appellants are independent of each other and have no concern with each other. Owners of the factory's appellants will pay PF contribution from October, 1985 to September, 1987. Appellants will pay 12% interest w.e.f. 1.9.1987. However, damages shall not be imposed if they pay the whole of it within 2 months from today."**

2. The short facts are:- Ext.P2 is an order passed under Section 7A of the Act by the petitioner. Respondents 1 to 4 herein challenged the same before the Appellate Tribunal. The challenge was against the findings rendered to the effect that all the units constitute a single establishment and hence they should implement the provision of the schemes from the date of commencement of manufacturing activity.

3. As per Ext.P5, the Tribunal took the view that the concerned units should be held as independent units. The Tribunal took note of the

decision of the Bombay High Court in *M/s.Metazing Private Limited v. A.M.Gandhi, The Regional Provident Fund Commissioner* (1991 Lab. I.C. 2060), in arriving at the said finding. The appeal was thus allowed holding that the three units should be held to be independent units and should be covered from October, 1985. The direction was to pay the provident fund contribution from October, 1985 to September, 1987 with interest at 12% with effect from 1-9-1987. An agreement between the Unions of workers and employees was also relied upon.

4. Shri.Premjit Nagendran, learned counsel for the respondents points out that the said order was passed after considering an agreement between the employer and the employees. It is submitted that the amounts covered by the said orders have already been remitted and except one unit, all other units are also not functioning. In view of the subsequent developments the matter does not require deep examination. At any rate the view taken by the Tribunal cannot be said to be perverse also. Therefore, the Original Petition is closed accordingly.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-